

DATE: November 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18432

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated foreign influence concerns. Her husband is Malaysian but resides with her in the United States, caring for their three children, and intends to apply for U.S. citizenship when he meets the residency requirement. The joint bank account they have in Malaysia has a minimal balance and they maintain it for visits to Malaysia. Although Applicant's father is a citizen of Taiwan, he has resided in the United States since 1985 and has applied for U.S. citizenship. Applicant's mother-in-law is a citizen and resident of Malaysia but is not an agent of a foreign power or in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On January 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order (1) and Department of Defense Directive, (2) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline B (Foreign Influence). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On February 3, 2003, DOHA received a response to the SOR from Applicant, in which she requested a hearing. The case was assigned to me on March 17, 2003. A notice of hearing was issued on March 27, 2003, and the hearing was held on May 1, 2003. During the hearing, two Government exhibits and the testimony of Applicant were received. The transcript (Tr) was received on May 9, 2003.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admission to all allegations in the SOR, I make the following findings of fact:

Applicant is a 30-year-old electrical engineer employed by a defense contractor. She is seeking a security clearance.

Applicant was born in Taiwan in 1973. She immigrated to the United States with her parents and four of her five siblings in 1985. Her older brother came to the United States several years later. Applicant became a naturalized citizen of the United States in 1992. She obtained her degree in electrical engineering from a major university in the United States in 1996. All five of her siblings have become United states citizens, as did her mother, who is deceased.

Although he has resided in the United States since 1985, Applicant's father, who is 64 years of age, is still a citizen of Taiwan. However, he has applied for U.S. citizenship. His difficulty with English has delayed him from becoming a U.S. citizen. Applicant's father was a farmer in Taiwan but he worked in and later acquired a Chinese restaurant in the United States. He is now retired because of a medical condition. He and his three brothers inherited land in Taiwan that has never been divided. Applicant's father also still owns the home in Taiwan where Applicant and her siblings lived. He intends to keep the home so that members of the family will have a vacation home when they visit Taiwan. (3)

Applicant's husband is a citizen of Malaysia. She met him in college, after he came to the United States in 1992. He returned to Malaysia after he obtained his degree in finance. (4) They married in Malaysia on June 19, 1996. After returning to the United States, Applicant went back to Malaysia in her position with a U.S. defense contractor and resided there with her husband from June 15, 1997 until December 15, 1997. (5) During this period, they opened a joint bank account in Malaysia, which they have never closed. They use the account when they visit Malaysia. The current balance in the account is approximately \$200.00. (6)

Applicant's husband has resided with her in the United States since May 2000. They purchased their home three years ago. Applicant's husband worked as a financial analyst until the birth of their first child. He stays home to care for their three children. He has not yet met the residency requirement to apply for U.S. citizenship. (7)

Applicant's mother-in-law, who is 65 years of age, is a citizen of Malaysia and resides in Penang. (8) She was a housewife and her deceased husband owned a palm oil plantation. Last year, she came to the United States to visit her son and Applicant. Since she does not speak English, Applicant's mother-in-law did not adapt well to the United States. Applicant's husband maintains regular contact with his mother but Applicant's contact is far less frequent. (9)

Terrorist organizations, including those linked to al-Qaida, are operating in the east coast of Malaysia in the state of Sabah. They are targeting Westerners and Western interests in the region. (10)

POLICIES

The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion to demonstrate that it is clearly consistent with the national interest to grant or continue a security clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are

applicable to this case.

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying under Guideline B include E2.A2.1.2.1, an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country (Disqualifying Condition 1). Another condition that could raise a security concern and may be disqualifying is E2.A2.1.2.8, a substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include E2.A2.1.3.1, a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (Mitigating Condition 1). Another conditions that could mitigate security concerns is E2.A2.1.3.5, foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities (Mitigating Condition 5).

CONCLUSIONS

The Malaysian citizenship of Applicant's husband raises Disqualifying Condition 1. However, there is absolutely no evidence to suggest he is an agent of any foreign power nor does the record demonstrate that he is in a position to be exploited by a foreign power. He has resided in the United States with Applicant for the past three years and intends to become a U.S. citizen. He and Applicant own a home in the United States and he has undertaken the care of their three children. Therefore, the security concern is mitigated in accordance with Mitigating Condition 1. I find in favor of Applicant with regard to SOR ¶ 1.a.

Applicant's interest in a bank account in Malaysia raises Disqualifying Condition 8, since it indicates that she may have a financial interest there that could make her vulnerable to foreign influence. However, Applicant and her husband opened the account for their use while they were residing in Malaysia. Although they have kept the account open for their use when they travel back there, the account only contains approximately \$200.00. Therefore, this condition is mitigated pursuant to Mitigating Condition 8, since the amount in the account is minimal and not sufficient to affect Applicant's security responsibilities. Consequently, I find in favor of Applicant with respect to SOR ¶ 1.b.

The Taiwanese citizenship of Applicant's father raises Disqualifying Condition 1. However, there is absolutely no evidence to suggest he is an agent of any foreign power nor does the record demonstrate that he is in a position to be exploited by a foreign power. Applicant's father, who is 64 years old and retired because of a medical condition, has resided in the United States ever since her family came here in 1985. Although he is the only member of Applicant's immediate family not to have become a U.S. citizen, it was due to his inability to become sufficiently proficient in English. Applicant's father has now applied for U.S. citizenship. Although he still owns property in Taiwan, it does not so substantial as to cause him to be exploited by agents of the Taiwanese Government. His principal holding is the family home that he maintains for family members to visit Taiwan. Given the circumstances, the security concern is mitigated in accordance with Mitigating Condition 1. Accordingly, I find in favor of Applicant with regard to SOR ¶ 1.c.

Applicant's relationship with her mother-in-law is sufficient to raise Disqualifying Condition 1. However, it is mitigated pursuant to Mitigating Condition 1, her since mother-in-law is not an agent of a foreign power or in a position to be exploited by one. Although terrorists are operating in Malaysia in the east coast state of Sabah, Applicant's mother-in-law does not reside in or near that region. Moreover, the terrorists are targeting Westerners and Western interests and not alaysian citizens. Therefore, I find in favor of Applicant with respect to SOR ¶ 1.d.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all the evidence in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Tr 13-14, 19-20, 26.
4. Tr 21.
5. Govt Ex 1 at 2.
6. Tr 12.
7. Tr 11, 21-23.
8. Govt Ex 1 at 7.
9. Tr 14, 27.
10. U.S. Department of State, Public Announcement on Malaysia, November 7, 2003, http://www.travel.state.gov/malaysia_announce.html.